

# **EXHIBIT E**

BEFORE THE AMERICAN ARBITRATION ASSOCIATION

THERABODY, INC.,	)	
	)	
Claimant,	)	
	)	Arbitration No.
v.	)	
	)	
DOMINION SOURCING, LLC,	)	
	)	
Respondent.	)	

---

DEMAND FOR ARBITRATION

---

Introduction

Claimant Therabody, Inc. ("*Therabody*") brings this arbitration to recover at least \$4,656,304.00 from Dominion Sourcing, LLC ("*Dominion*") as a result of Dominion's breach of a September 12, 2022 Therabody Terms & Conditions of Sale (Corporate Markets) agreement (the "*Agreement*"), which is attached as Exhibit 1. Dominion's "IT Director" David Walton ("*Mr. Walton*") fraudulently induced Therabody to enter into the Agreement with Dominion, causing Therabody to sell its patented, high-end percussive massage devices, wellness products, and accessories (the "*Products*") to Dominion at a greatly reduced price under the guise that the Products would be used by Dominion as corporate gifts. During negotiations, Therabody expressed concern that the Products would end up in ecommerce marketplaces at reduced costs, thereby disrupting Therabody's Authorized Resellers (defined below), but Mr. Walton insisted that none of the Products would end up for sale. In

exchange for Therabody's agreement to sell Dominion the Products, Dominion unambiguously and expressly agreed to not transfer or sell the Products to any person who could reasonably be expected to sell the Products on any ecommerce marketplace. *See* Exh. 1 at Section 3. Dominion also agreed to damages equal to the difference between the sale price to Dominion and Therabody's manufacturer suggested retail price ("*MSRP*") for the Products. *Id.*

Therabody—through its own diligence—discovered that the Products it sold to Dominion are now being sold on ecommerce marketplaces, namely Amazon.com but likely others, in breach of the Agreement. Dominion's obligation to pay the difference between the MSRP and the initial price at which Therabody sold the Products is clear and definite. Therabody requested that Dominion pay the difference, but Dominion has refused.

### **Parties**

Therabody is a wellness brand specializing in percussive massage therapy and enhancing the everyday lives of individuals using its high-end percussive massage devices. Therabody is a corporation organized under the laws of the State of Delaware with its principal place of business in California, and its Products can be found in more than forty countries across the globe.

Dominion is a limited liability company purportedly formed under the laws of the State of Virginia with its principal place of business in Midlothian, Virginia. Dominion was formed in January 2018, but its status, per the Virginia Secretary of State's records, is currently

“cancelled.” Therabody understands that Mr. Walton is the principal and owner of Dominion and used Dominion to perpetrate fraud against manufacturers, such as Therabody, by purchasing products at discounted prices, in bulk, for the stated purpose of gifts to employees, clients, and/or affiliates, but in reality Dominion sold the purchased products at an increased price on ecommerce marketplaces or to individuals or entities who then sell the products at an increased price on ecommerce marketplaces.

### **Venue and Jurisdiction**

The Parties agreed to binding arbitration in Los Angeles, California, under Section 12 of the Agreement. *See* Exh. 1 at Section 12. The Parties further agreed that the venue for any in-person hearing would be in Los Angeles, California. *See id.* Counsel for Therabody contacted Dominion’s counsel confirming submission to arbitraiton on July 3, 2023, and July 6, 2023, but to date, Dominion’s counsel has not responded.

### **Facts**

#### **A. Therabody’s Business.**

Therabody sells the Products directly to consumers and other businesses through the internet on its website and other ecommerce marketplaces, such as Amazon.com, or through traditional brick-and-mortar establishments. Therabody also sells to and through certain wholesalers and authorized resellers (each, an “*Authorized Reseller*” and collectively, the “*Authorized Resellers*”). The Products bear various trademarks validly registered with the United States Patent and Trademark Office and are protected by various patents. Therabody

strives to ensure that consumers of its Products are receiving authentic Products from either Therabody itself or one of its reputable Authorized Resellers. As a result, Therabody has become an industry leader in the market, and the Products are synonymous with high-end, top-quality percussive massage devices.

**B. Therabody and Dominion Enter into the Agreement.**

On September 12, 2022, Dominion entered into the Agreement with Therabody, and Mr. Walton executed the Agreement on behalf of Dominion. The Agreement outlined the terms and conditions under which Therabody would sell the Products to Dominion. Therabody granted a limited license to Dominion, provided instructions to Dominion as to how to purchase the Products, and obligated Dominion to conduct its business in a manner that reflected favorably on the Products and Therabody, among other things. *See* Exh. 1 at Sections 2, 4, and 6.

In Section 3 of the Agreement, Dominion expressly agreed that, by purchasing the Products, Dominion would be prohibited from reselling the Products. Specifically, Section 3 provides:

The sale of Products by [Dominion] is strictly prohibited. [Dominion] acknowledges and agrees that [Dominion] shall not actively sell or promote any Products. In order to ensure the same and proper handling of the products, and to preserve the luxury brand image of the Products, [Dominion] agrees not to sell Products on or via any third-party market place ecommerce websites, including but not limited to Amazon or E-Bay, and not sell any Products to operators of ecommerce websites for sale on such marketplace websites, and not sell or otherwise transfer Products to any person who could

reasonably be expected to sell the products on any such marketplace website.

*See* Exh. 1 at Section 3.

Section 3 is an integral part of the Agreement, and Therabody specifically bargained for this Section due to the harm caused by the unauthorized resale of the Products on ecommerce websites, which is precisely why Therabody only permits the resale of its Products through Authorized Resellers.

In this ecommerce age, unauthorized resellers obtain products from a variety of sources and then sell products anonymously online. Many times, the products sold by unauthorized resellers may be materially different than those sold by the brand or authorized resellers. In some instances, Therabody has also determined that some products sold by unauthorized resellers are counterfeit devices and not genuine Therabody products.

Specifically, even if the products are genuine, unauthorized resellers may sell products without warranties, of an inferior quality, that are defective, and in violation of a business's rights in its intellectual property. Indeed, on the Amazon Marketplace, all sales of a particular product are sold under a unique Amazon Standard Identification Number such that consumers do not know whether a product is sold by an unauthorized reseller or a legitimate reseller.

Because the unauthorized resellers are able to sell without disclosing their identity, manufacturers and brands experience challenges in communicating with the unauthorized resellers to alert them of material differences. Ultimately, consumers are harmed as they

unknowingly buy a materially different product compared to a legitimate product from the manufacturer. With this in mind, Therabody specifically bargained for, and Dominion agreed to, Section 3 of the Agreement.

**C. Dominion Fraudulently Induces Therabody Into the Agreement.**

During August and September 2022, Dominion's Mr. Walton exchanged correspondence with Therabody's sales representatives regarding the sale and purchase of the Products. Mr. Walton and Therabody's representative also discussed the same via telephone. During these communications, Mr. Walton represented, falsely, to Therabody that Dominion was purchasing the Products for Dominion's affiliates, clients, and employees, including "a huge company wide campaign," and "other larger companies." See September 1, 2022 Email Correspondence between Mr. Walton and Andrew Spellman, attached as **Exhibit 2**.

For example, Mr. Walton initially reached out to Therabody representatives on August 23, 2023, to "source a lot of [Therabody] product." See August 23, 2022 Email Correspondence from Mr. Walton to Hannah Solton, attached as **Exhibit 3**. Andrew Spellman, Therabody's Vice President of Corporate Markets made contact with Mr. Walton, who then followed up by asking for pricing on two to three thousand products of Therabody's Pro, Elite, Mini, and Prime percussive massage devices, each. See Exh. 2. Mr. Walton then asked for an additional quote of five thousand of each of the lines of Products. See *id.* Ultimately, Mr. Walton further enticed Therabody to complete the sale by teasing

Therabody that it would be “a huge company wide campaign” and a follow-up sale with the “same group of companies.” *See id.* Mr. Walton also compared these transactions with Therabody to another previous transaction Dominion purportedly completed for “30,000 computers from [S]taples for [Dominion’s] employees and drivers.” *See id.* Contemporaneous with the email communications in August and September, 2022, Mr. Walton represented to Therabody that the Products Dominion intended to purchase would be used for Dominion’s employees, clients, and affiliates as well. As a result of the foregoing, Therabody reasonably understood that Dominion was purchasing the Products to be used as gifts for its employees, clients, and affiliates.

#### **D. Dominion Begins Purchasing Products.**

Dominion then purchased the Products from Therabody, pursuant to the Agreement, under the guise that Dominion would be using the Products as gifts to its employees, business partners, and/or affiliates, when in reality the Products were being purchased for further resale in direct contravention of Section 3 of the Agreement.

First, on September 2, 2022, Dominion placed an order (Order No. SO1162234) for 10,500 Products in the amount of \$1,422,500 (the “*First Order*”), which is attached as **Exhibit 4**. Then on October 12, 2022, Dominion placed another order (Order No. SO1190190) for 9,092 Products in the amount of \$1,620,004 (the “*Second Order*”), which is attached as **Exhibit 5**. On December 14, 2022, Dominion placed a third order (Order No. SO1309224) for 1,000 Products in the amount of \$125,000 (the “*Third Order*”), which is attached as **Exhibit 6**. Lastly,



on January 10, 2023, Dominion placed a fourth order (Order No. SO1354224) for 4,000 Products in the amount of \$670,000 (the “*Fourth Order*”) (collectively, the “*Orders*”), which is attached as **Exhibit 7**. A detailed listing of the Products, quantities purchased, purchase price paid by Dominion and the MSRP of each Product is set forth on **Exhibit 8**.

In total, Dominion purchased 24,592 Products for \$3,837,504 from Therabody. Dominion placed the Orders subject to the terms and conditions in the Agreement, including the prohibition on the resale or transfer of the Products as set forth in Section 3. If the Products sold to Dominion were purchased at MSRP the total purchase price of the Products would amount to \$8,493,808.

**E. Dominion Sells or Transfers the Products, Which are then Discovered in Ecommerce.**

As detailed above, due to the current state of ecommerce marketplaces, with unauthorized resellers selling materially different products, Therabody actively monitors the sales of its Products. In particular, Therabody conducts test buys of its Products and tracks its Products through its channels using product identification numbers. Therabody kept records of the product identification numbers for the Products it sold to Dominion.

After Dominion purchased the Products from Therabody, Therabody conducted test buys of Products listed for sale on ecommerce marketplaces. Specifically, on January 24, 2023, Therabody placed an order for a Product—a Theragun Prime—from a reseller doing business as Caresour Official Store on the Amazon Marketplace. Therabody traced this Product through its product identification numbers to the Products purchased by Dominion that were

subject to the Agreement, including Section 3. As a result, Therabody discovered that Dominion is either selling or offering for sale the Products on ecommerce marketplaces through one or more affiliates or have transferred the Products to others to then sell the Products on ecommerce marketplaces in violation of the Agreement.

**F. Dominion Agreed That Therabody's Damages Amount to \$4,656,304.**

Dominion breached (and is continuing to breach) Section 3 of the Agreement by selling or offering for sale the Products through ecommerce or transferring the Products to others who Dominion reasonably knew would sell the Products on ecommerce marketplaces. Dominion specifically agreed that if it violated Section 3, "[Dominion] shall pay Therabody...the difference between the purchase price paid by [Dominion] for the Products and the MSRP for such Products."

The purchase price paid by Dominion for the Products amounted to \$3,837,504. The MSRP of the Products purchased by Dominion amounts to \$8,493,808. Accordingly, the difference between the price paid by Dominion for the Products and the MSRP for the Products equals \$4,656,304.

**G. Dominion Ignores Therabody's Request for Immediate Payment From Dominion.**

As a result of the foregoing, Therabody sent a February 7, 2023 letter to Mr. Walton and Dominion (the "*Letter*"), which is attached as Exhibit 9. The Letter set forth the terms of the Agreement and Orders, as well as the purchase price and MSRP of the Products, and requested immediate payment. Dominion and Mr. Walton refused to pay Therabody the

\$4,656,304 to which Dominion previously agreed. Consequently, Therabody initiated this action.

**CLAIM ONE**  
**(BREACH OF CONTRACT)**

Therabody and Dominion entered into a legally valid and binding contract—the Agreement—on September 12, 2022. Therabody and Dominion also entered into additional legally valid and binding contracts in the form of the Orders. As Dominion was well aware, the Orders were subject to the terms and conditions of the Agreement.

Therabody fulfilled all of its obligations set forth in the Agreement and Orders, including delivery of the Products. However, Dominion willfully and materially breached the Agreement by, *inter alia*, selling or offering for sale the Products in ecommerce marketplaces or transferring the Products to individuals who were reasonably known to Dominion to then sell or offer for sale the Products on ecommerce marketplaces, and Dominion did so without any legal excuse.

As a result of Dominion’s actions, Therabody has been harmed in the amount of \$4,656,304, which Dominion agreed to, as well as additional costs and expenses associated with this action.

**CLAIM TWO**  
**(FRAUD)**

Dominion made false representations of material fact when it, *inter alia*, represented to Therabody that the Products it purchased were for its employees, clients, and/or affiliates

and to be used as corporate gifts, when in reality Dominion had no intention of gifting the Products and instead intended to resell the Products or transfer the Products to individuals reasonably known to Dominion to then sell the Products on ecommerce marketplaces.

Dominion made these false representations of material fact intentionally and knowingly because they knew that Therabody's agreement with its Authorized Resellers and the Agreement prevented Dominion from selling the Products on ecommerce marketplaces or transferring the Products to individuals reasonably known to Dominion to sell the Products on ecommerce marketplaces.

With these false representations, Dominion intended to, and did, mislead Therabody into believing that the Products purchased would be used as corporate gifts. Therabody reasonably relied on Dominion's representations that it was purchasing the Products to then use as corporate gifts for Dominion's employees, clients, and/or affiliates.

As a result of Dominion's false representations of material fact, Therabody was induced into selling the Products to Dominion at a reduced price with the Orders and subject to the Agreement. Therabody's damages, including costs and attorneys' fees, caused by Dominion's false misrepresentations are to be determined in accordance with these proceedings.

### **Conclusion**

Therefore, Therabody asks the Arbitrator to enter an Award granting Therabody at least \$4,656,304.00 in damages for Dominion's breach of the Agreement and fraudulent misrepresentations in addition to any costs and fees the Arbitrator deems appropriate.

Respectfully submitted,

**KOHRMAN JACKSON & KRANTZ LLP**

/s/ Alex E. Jones

ALEX E. JONES (Ohio Bar No. 0095807)

KYLE D. STROUP (Ohio Bar No. 0099118)

One Cleveland Center

1375 East Ninth Street, 29<sup>th</sup> Floor

Cleveland, Ohio 44114

Telephone: (216) 696-8700

Email: [aej@kjk.com](mailto:aej@kjk.com); [kds@kjk.com](mailto:kds@kjk.com)

## D THERABODY Terms & Conditions of Sale (Corporate Markets)

This Terms and Conditions of Sale (the “**Agreement**”) is made and entered into as of the last date of signature by and between Therabody, Inc. a Delaware corporation (“**Therabody**”) and the buyer listed on the signature page hereto (“**Buyer**”).

**1. SCOPE.** The Agreement will exclusively govern and control the provision of any products purchased (the “**Products**”) from Therabody by Buyer. This Agreement, comprises the entire agreement between the parties, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. The Buyer agrees that the terms and conditions of this Agreement shall prevail, notwithstanding any contrary or additional terms in any purchase order, sales acknowledgement, confirmation or any other document of either party concerning the purchase or sale of the Products. To the extent they are not in direct conflict with this Agreement, the terms of Therabody’s standard purchase order form, form invoices and credit application form will be incorporated in and made a part of this Agreement.

**2. LIMITED LICENSE.** Buyer acknowledges that Therabody is the exclusive owner of all copyrights and trademarks, including Therabody’s name, logo and promotional materials (the “**Therabody Marks**”) in connection with the Products. In the performance of this Agreement, Buyer shall only be entitled to use and display those of Therabody’s Marks and copyrighted materials that have been approved by Therabody for use in relation to the provisions of the Products to Buyer’s employees; provided, however, that Buyer shall follow the instructions of Therabody as to the use or discontinuance of use of such trademarks and materials. Buyer agrees not to modify, adapt, alter, or create derivative works from the Products. Buyer will not remove, alter, or obscure in any way any proprietary rights notices of Therabody on or within the Products. Use of these trademarks and materials shall not grant Buyer any rights to the same.

**3. PROHIBITED SALES.** The sale of Products by Buyer is strictly prohibited. Buyer acknowledges and agrees that it shall not actively sell or promote any Products. In order to ensure the same and proper handling of the Products, and to preserve the luxury brand image of the Products, Buyer agrees not to sell Products on or via any third-party market place e-commerce websites, including but not limited to Amazon or E-Bay, and not sell any Products to operators of e-commerce websites for sale on such marketplace websites, and not sell or otherwise transfer Products to any person who could reasonably be expected to sell the Products on any such marketplace website. Buyer agrees that Therabody would incur damages from the violation of this section that are difficult to calculate. Therefore, if Buyer breaches this Section 3, without prejudice to Therabody’s other rights and remedies under this Agreement and notwithstanding anything to the contrary in Section 9, Buyer shall pay Therabody, as liquidated damages, the difference between the purchase price paid by Buyer for the Products and the MSRP for such Products. Buyer and Therabody agree that any damages payable by Buyer pursuant to this Section 3 are a genuine pre-estimate of the Therabody’s loss in respect of matters dealt with in this Section 3.

**4. RESPONSIBILITY OF BUYER.** Buyer will: (i) conduct its business in a manner that reflects favorably on the Products and the good name, goodwill and reputation of Therabody, in accordance with the any guidelines issued by Therabody in writing from time to time; (ii) make no false or misleading representations concerning Therabody or the Products including any representation concerning any medical or curative effect or purpose of the Products, (iii) make no representations, warranties or guarantees with respect to the specifications, features or capabilities of the Products which are inconsistent with the literature distributed by Therabody; (iv) only use the Therabody Marks as expressly authorized in writing by Therabody; and (v) not disparage Therabody, its officers or its owners, or take any action that impairs Therabody’s goodwill or negatively affects the value of Therabody’s business. Buyer shall hold Therabody harmless from any liability deriving from the violation or incorrect application of the above listed obligations and rules.

**5. PURCHASE AND DELIVERY.** Buyer may order Products from Therabody by submitting an order (“**Order**”), pursuant to Therabody’s order system and policies. Any Orders received from Buyer by Therabody shall be deemed to have been authorized by Buyer. Such Order will include, at a minimum, (i) unit description and quantity; (ii) shipping destination; (iii) requested delivery date; and (iv) other instructions or requirements pertinent to the Order. All Orders shall be subject to Therabody’s acceptance and this Agreement will exclusively govern and control the provision of Products from Therabody. If Buyer cannot use Therabody’s electronic order system, Buyer may submit an order in written form using Buyer’s purchase order form. However, any additional or contradictory terms and conditions contained on Buyer’s order form will be of no effect, regardless of Therabody’s acknowledgment or acceptance of such Order. Therabody reserves the right to accept or decline any order, in whole or in part, and to cancel any accepted Order prior to shipment. Therabody shall, at its discretion, choose the most appropriate shipping method and will bear the risk of loss or damage, up to delivery of the Products to Buyer or a customer (as applicable). Therabody shall deliver the Products to Buyer’s address (or such other address specified by the Buyer in the sales order form). Therabody will use commercially reasonable efforts to ship the Products on or before the shipping date agreed upon by the parties. Therabody may invoice Buyer for the Products prior to, on or at any time after the completion of delivery to Buyer or Buyer’s customer (as applicable), adding shipment costs to the wholesale price of the Products. In case of delivery of a damaged or defective Therabody Product to the Buyer, Buyer shall notify Therabody within five (5) business days from delivery of that Therabody Product and Therabody will (subject to receipt by Therabody of satisfactory evidence of such damage or defect): (i) arrange for the return of the Therabody Product; and (ii) at its option, issue a replacement or provide Buyer with a credit equal to the price of the Therabody Product. Therabody’s liability in respect of damaged or defective Products shall be limited to the remedies specified in this Section 5. With the exception of Products returned pursuant to the terms of the Limited Product Warranty (as defined herein), Buyer shall have no right to return any Products to Therabody. Buyer is responsible for all risks of loss or damage to the Products after Therabody’s delivery of such Products to Buyer, including any and all damage as a result of theft, abuse, neglect or force majeure, regardless of whether such theft, abuse, neglect or force majeure is caused by Buyer, its employees or other third party. Therabody shall accept an Order from Buyer by counter-signing the Order or by delivering the applicable Products to Buyer, whichever occurs first. Therabody may, without liability or penalty, and without constituting a waiver of any of Therabody’s rights or remedies under this Agreement: (i) cancel any accepted Orders if Therabody determines that Buyer is in violation of its payment obligations or has otherwise breached this Agreement, or (ii) reject any Order by, in each case, providing Buyer written notice thereof. There shall be no changes or modifications to any Order unless expressly agreed to in writing by an authorized agent of Therabody and Buyer.

**6. PAYMENT AND PRICES.** Therabody shall sell the Products to Buyer at Therabody’s prices set forth in an accepted purchase order, or as agreed separately in writing. Full payment for the Products shall be made by Buyer to the Therabody entity set forth in the accepted purchase order or invoice in the currency set forth therein, or as agreed separately, which prices are subject to change at any time upon a thirty (30) day notice to Buyer per Therabody’s sales order form. In case of a price increase, Buyer is entitled to terminate the Agreement subject to a thirty (30) day notice

EXHIBIT 1

period. Therabody shall have the right to discount its Products at any time at its sole discretion. After reviewing Buyer's credit application, Therabody will establish payment terms for Buyer, which, depending upon Therabody's evaluation of Buyer's credit-worthiness may require that payments be made by credit card or ACH prior to shipment, upon shipment or within a specified time after shipment. Therabody may, in its sole discretion, change the terms of payment applicable to Buyer upon notice to Buyer. Subject to the foregoing and unless otherwise communicated to Buyer by Therabody, Buyer agrees to pay Therabody the corresponding purchase price listed above thirty (30) days from the date of shipment. If Buyer fails to pay any amounts in accordance with the terms and conditions hereof, Therabody shall have the right, in addition to any of its other rights or remedies, to suspend any obligations to Buyer without liability to Buyer until such amounts are paid in full. Buyer shall pay Therabody a service charge of one and one-half percent (1.5%) per month (or the maximum allowed by law) on any past due amounts and shall also reimburse Therabody for its costs incurred in collecting any past due amounts. Buyer agrees to provide Therabody with complete and accurate billing and contact information and agrees to keep it up-to-date. Buyer shall pay for, and shall hold Therabody harmless from, all shipping charges and insurance costs. In addition, all prices are exclusive of, and Buyer is solely responsible for, all taxes with respect to, or measured by, the manufacture, sale, shipment, use or price of the Products (including interest and penalties thereon). Buyer shall not – and acknowledges that it will have no right, under this Agreement, any Order, any other agreement, document or law to – withhold, offset, recoup or debit any amounts owed (or to become due and owing) to Therabody, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Therabody, whether relating to Therabody's breach or non-performance under this Agreement, any Order, or any other agreement between Therabody and Buyer.

**7. TERM AND TERMINATION.** This Agreement shall commence on the date of the Purchase Order and continue for an indefinite period of time in accordance with and subject to the below. Either party may at any time terminate this Agreement without cause with a 30-day written notice sent to the other party. Either party may terminate this Agreement at any time in the event of any material breach of this Agreement by the other party, including Buyer's failure to pay any sums owing hereunder when due, which is not cured within five (5) business days after written notice of the same. This Agreement shall terminate automatically without notice to either party hereto, as allowed and within the limitation imposed by applicable bankruptcy and/or insolvency law, if Therabody or Buyer shall become insolvent, be adjudicated bankrupt, make a general assignment for the benefit of creditors, or take the benefit of any insolvency, reorganization or other relief act or similar law, or if a receiver or trustee be appointed for its property. No termination of this Agreement will relieve Buyer of its obligation to make any payments owing to Therabody. Upon the termination or expiration of this Agreement, and subject to the following sentence: (i) Therabody reserves the right to cease all further delivery of Products (including providing access to support); (ii) all outstanding invoices for Buyer shall immediately become due and payable; (iii) all rights and licenses granted to either party hereunder will expire, unless expressly designated as surviving; and (iv) each party will promptly return to the other party (or destroy, and upon request provide a certificate of destruction signed by a company officer) all Confidential Information of the other party (if any) in such party's possession. To the maximum extent allowed by applicable law, Buyer waives any right it may have to receive any compensation or damages upon any termination of this Agreement which occurs in accordance with its terms.

**8. WARRANTIES; LIMITED WARRANTY; WARRANTY DISCLAIMER.** Each party hereby represents and warrants: (i) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization or chartering; and (ii) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such party and will be enforceable against such party in accordance with its terms. Buyer represents and covenants: (x) it shall not alter or modify in any manner whatsoever the Products sold or shipped to Buyer hereunder, except as permitted herein; and (y) Buyer shall not make any alterations to any of the packaging or labeling of the Products, or make any disease claims, health claims, or structure/function claims about the Products, that would violate or be prohibited by applicable law. Except as otherwise expressly provided in a separate, signed, written agreement between Buyer and Therabody, or as expressly provided herein, Therabody warrants solely to the Buyer that the Products shall materially conform to Therabody's published specifications for such Products at the time of manufacture (the "*Limited Product Warranty*"). The Limited Product Warranty provided herein is valid from the original date of purchase of such Products to Buyer for the periods specified for each Therabody Product on the Therabody website. The Limited Product Warranty is also valid only when the Products are used by properly trained individuals and not otherwise subject to abuse, misuse, neglect, negligence, improper testing, improper handling, improper operation, or use contrary to the instructions issued by Therabody with the Products. All technical advice, documentation and information provided by Therabody, whether by phone, e-mail, website or any other channel is provided "AS IS" and without any warranty of any kind. It is Buyer's responsibility to determine if a Therabody Product is suitable for a specific purpose and to apply the necessary safety precautions. Buyer's exclusive remedies under this Limited Product Warranty are, at Therabody's option: (i) repair or replacement of the Product that failed to conform to the warranty above, or (ii) at Therabody's option, a credit for the amount paid to Therabody for any non-conforming Product. Buyer and customer, as applicable, will be responsible for return of the Products to Therabody for repair or replacement pursuant to a return merchandise authorization ("*RMA*") issued by Therabody and in accordance with Therabody's return procedures. The foregoing states Buyer's sole and exclusive remedy, and Therabody's entire liability, for breach of warranty of purchased Products under this Agreement. Except as set forth above in Section 8, the Products and any Therabody training information, educational information, marketing materials and/or digital assets (the "*Therabody Materials*") are provided "as is" without warranties of any kind. Without limiting the foregoing, Therabody disclaims all warranties and representations of any kind, whether express, implied, or statutory, including without limitation the implied warranties of merchantability, title, non-infringement, fitness for a particular purpose, quiet enjoyment, and accuracy. Therabody does not warrant that the operation of the Products will be uninterrupted or error-free. Both parties acknowledge that they have not entered into this Agreement in reliance upon any warranty or representation other than those set forth above in this Section 8.

**9. INDEMNITY AND LIMITATION OF LIABILITY.** Each party ("*Indemnitor*") hereby agrees to defend, indemnify, and hold the other party, and their officers, directors, agents, representatives and employees (collectively "*Indemnitee(s)*"), harmless against all costs, expenses, and losses (including reasonable attorneys' fees and costs) incurred through claims of third parties against any of the Indemnitees based on: (i) breach of any representation or warranty set forth herein; or (ii) any fraud, negligence or willful misconduct by the Indemnitor (including their officers, directors, agents, representatives and employees); or (iii) agreements to indemnify otherwise stated herein. Each Indemnitor's obligations under this section shall be subject to the Indemnitee: (i) providing the Indemnitor with prompt written notice of any action, claim or proceeding to which this section may apply; (ii) cooperating with the Indemnitor (at the Indemnitor's expense) in the defense and settlement of any such action, claim or proceeding; and (iii) granting the Indemnitor sole control over the defense or settlement of any such action, claim or proceeding. Notwithstanding the foregoing, any settlement that would impose a material affirmative obligation on, or materially diminish the rights of, an Indemnitee will require the prior written consent of such party, such consent not to be unreasonably withheld or delayed, and an Indemnitee shall have the right to be represented by counsel of its own choice at its own expense. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR SPECIAL, INCIDENTAL,



OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER FROM BREACH OF CONTRACT, BREACH OF WARRANTY, OR FROM NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER FORM OF ACTION), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN. IN NO EVENT SHALL THERABODY'S AGGREGATE LIABILITY ARISING OUT OF, OR RELATED TO, THIS AGREEMENT—WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF THERABODY FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH WILL BE AS PROVIDED UNDER THE SECTION ABOVE) – EXCEED AN AMOUNT EQUAL TO THE TOTAL PRICE OF THE PRODUCTS PURCHASED BY BUYER UNDER THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE PAYMENT AMOUNTS SPECIFIED IN THIS AGREEMENT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT THERABODY WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THE FOREGOING LIMITATIONS OF ITS LIABILITY AND THE WARRANTY DISCLAIMERS CONTAINED HEREIN. EACH LIMITATION ON LIABILITY OR LIMITED OR EXCLUSIVE REMEDY SET FORTH IN THIS AGREEMENT IS INDEPENDENT OF ANY OTHER LIMITATION OR REMEDY AND IF ANY SUCH LIMITATION OR REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS OTHERWISE HELD TO BE UNENFORCEABLE, THAT SHALL NOT AFFECT THE VALIDITY OF ANY OTHER SUCH LIMITATION OR REMEDY.

**10. CONFIDENTIAL INFORMATION.** As used herein, “Confidential Information” includes, but is not limited to, any and all information given to or acquired by Buyer in the course of the Agreement relating to Therabody; its business strategy, customers, pricing, information about future product releases, marketing plans, new products and their design; and the Products. Buyer shall not divulge any Confidential Information to third parties for three (3) years from the date such Confidential Information is disclosed, and upon termination of this Agreement shall return to Therabody all Confidential Information in written form. This obligation of confidentiality shall not apply to any information which is or later becomes public knowledge through no fault of Buyer, or which is subsequently acquired by Buyer from sources under no obligations of secrecy, or which is reasonably required to be disclosed by any law or court order and shall survive after termination of the Agreement.

**11. FORCE MAJEURE.** If performance of this Agreement, or any obligation hereunder (other than the obligation to pay) is prevented, restricted, or interfered with by any act or condition whatsoever beyond the reasonable control of the affected party (including, without limitation, export or import restrictions, and inability to obtain export or import licenses; pandemic or epidemic; strike or combination of workmen or other labor disturbances; any other cause whether or not of a similar nature) (“Force Majeure”), the party so affected, upon giving prompt notice to the non-affected party, will be excused from such performance to the extent of such prevention, restriction, or interference. Force Majeure shall not excuse Buyer's failure to pay for delivered Products.

**12. GENERAL TERMS.** This Agreement can be modified only in writing signed by an authorized officer of the party against which such modification is asserted. Buyer agrees that a third-party sales representative of Therabody is not authorized to modify this Agreement. This Agreement and all questions relating to its validity, interpretation, performance, and enforcement will be governed by and construed in accordance with the laws of the State of California. Should any conflict arise, the Parties hereby irrevocably submit themselves to arbitration in Los Angeles, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. Any notice or other communication required or permitted hereunder shall be hand-delivered or mailed via express carrier, postage prepaid to the recipient party at its address as first above written or as changed by notice given hereunder and shall be deemed given upon the earlier of receipt or three (3) days after mailed. In addition, Buyer shall send a copy of all notices by email to [legal@therabodycorp.com](mailto:legal@therabodycorp.com). Failure to enforce any provision of this Agreement by either party shall not be construed as a waiver of that provision. If any provision of this Agreement is deemed invalid, illegal or incapable of being enforced under any applicable rule of law or public policy, the remainder of this Agreement shall be valid and otherwise enforceable to the fullest extent permitted by law. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, representatives, successors and permitted assigns. Each of the parties hereto agrees on behalf of itself, its successors and assigns, that it will, without further consideration, execute, acknowledge and deliver such other documents and take such other action as may be necessary or convenient to carry out the purposes of this Agreement. All provisions regarding indemnification, intellectual property ownership, warranty, liability, and limits thereon, and confidentiality shall survive the termination of this Agreement.

**Therabody, Inc.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Dominion Sourcing**

By: David C. Valron II

Name: David C. Valron II

Title: IT Director

Date: 9/12/2022



## Alex E. Jones

---

**From:** Jonathan Feldman <jonathan.feldman@therabodycorp.com>  
**Sent:** Thursday, June 22, 2023 1:50 PM  
**To:** Alex E. Jones  
**Subject:** Fwd: FW: Dominion Sourcing & Therabody

FYI

----- Forwarded message -----

From: **Andrew Spellman** <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
Date: Wed, Jun 21, 2023 at 9:22 AM  
Subject: FW: Dominion Sourcing & Therabody  
To: Jonathan Feldman <[jonathan.feldman@therabodycorp.com](mailto:jonathan.feldman@therabodycorp.com)>

See below reference to “employees and drivers”.

Andrew

Andrew Spellman

Vice President Corporate Markets | Therabody

C: 314-278-8835

E: [andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)

W: [www.therabody.com](http://www.therabody.com)



---

**From:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Date:** Friday, September 2, 2022 at 12:33 PM  
**To:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Subject:** Re: Dominion Sourcing & Therabody

Hi Andrew,

We don't use D & B. We have commercial references that we purchase from quite often in ABT Commercial as well Staples. We just got done purchasing about 30,000 computers from staples for our employees and drivers. Since we're a private company paying wire or credit card, I don't think we would release financials. I'm a bit confused on the below. Can we talk about what you need on Tuesday? I don't want there to be any hang ups.

Thanks,

David Walton

---

**From:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Sent:** Friday, September 2, 2022 1:23 PM  
**To:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Subject:** Re: Dominion Sourcing & Therabody

Thank you.

AS

Andrew Spellman

Vice President Corporate Markets | Therabody

C: 314-278-8835

E: [andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)

W: [www.therabody.com](http://www.therabody.com)



---

**From:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Date:** Friday, September 2, 2022 at 12:10 PM  
**To:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Subject:** Re: Dominion Sourcing & Therabody

No problem. Will have to get you info on Tuesday.

Thanks,

David Walton

---

**From:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Sent:** Friday, September 2, 2022 12:59:08 PM  
**To:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Subject:** Re: Dominion Sourcing & Therabody

David:

As we set up your account and I sent your order through, it was flagged by our order risk management team and they are requesting some things from you as they reviewed your D&B report.

Can you please provide any financials, bank references, or commercial customer references for them to review?

Andrew

**Andrew Spellman**

Vice President Corporate Markets | Therabody

C: 314-278-8835

E: [andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)

W: [www.therabody.com](http://www.therabody.com)



---

**From:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>

**Date:** Friday, September 2, 2022 at 10:50 AM

**To:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>

**Subject:** Re: Dominion Sourcing & Therabody

Great news thank you. When can you have a sales order ready for me?

Thanks,

David Walton

---

**From:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>

**Sent:** Friday, September 2, 2022 11:36:31 AM

**To:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>

**Subject:** Dominion Sourcing & Therabody

David:

We have all products ready to ship. Attached is ACH info.

Andrew

**Andrew Spellman**

Vice President Corporate Markets | Therabody

C: 314-278-8835

E: [andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)

W: [www.therabody.com](http://www.therabody.com)



---

**From:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Date:** Friday, September 2, 2022 at 9:09 AM  
**To:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Subject:** Re: Therabody

5K Mini @ \$90  
4K Prime @ \$140  
1500 Pro @ \$275

Call next week for Credit Card. Just to confirm that is a 2% fee added to total charge correct?

Thanks,

David Walton

---

**From:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Sent:** Thursday, September 1, 2022 1:32 PM  
**To:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Subject:** Re: Therabody

David:  
Here are the item numbers:

Theragun PRO	G4-PRO-PKG-US
Theragun Prime	G4-PRIME-PKG-US
Theragun mini	G4-MINI-PKG-US

Andrew

**Andrew Spellman**  
Vice President Corporate Markets | Therabody  
C: 314-278-8835  
E: [andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)  
W: [www.therabody.com](http://www.therabody.com)



---

**From:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Date:** Thursday, September 1, 2022 at 12:05 PM  
**To:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Subject:** Re: Therabody

Can you get me the part numbers for this first order? Will have form back in your hands with first order by morning. What is the turnaround time on shipping? I will have a small batch of around 9000 on the first order. If that goes well, I can start pushing them out to our other larger companies fairly quickly.

Thanks,

David Walton

---

**From:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Sent:** Wednesday, August 31, 2022 8:24:27 PM  
**To:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Subject:** Re: Therabody

Ready!

**Andrew Spellman**  
VP of Corporate Markets | Therabody  
P • 314.278.8835  
E • [andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)  
[www.therabody.com](http://www.therabody.com)

On Aug 31, 2022, at 6:57 PM, David Walton <[DWalton@dominionsource.com](mailto:DWalton@dominionsource.com)> wrote:

We may go big with this. If you can do those prices we can do a huge company wide campaign

Thanks,

David Walton

---

**From:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Sent:** Wednesday, August 31, 2022 9:24:50 AM  
**To:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Subject:** Re: Therabody

Great. Thank you.  
Andrew

Andrew Spellman

Vice President Corporate Markets | Therabody  
C: 314-278-8835  
E: [andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)  
W: [www.therabody.com](http://www.therabody.com)



---

**From:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Date:** Wednesday, August 31, 2022 at 8:22 AM  
**To:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Subject:** Re: Therabody

Awesome news. Thank you. I am out on vacation back until Friday. Will have it to you then

Thanks,

David Walton

---

**From:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Sent:** Wednesday, August 31, 2022 9:18:23 AM  
**To:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Subject:** Re: Therabody

David:

We can get to those prices for you for a large buy of the 2,000 or so units per unit you are requesting. Please complete the attached New Account Form to get things rolling on our end and return to me.

Andrew

Andrew Spellman

Vice President Corporate Markets | Therabody  
C: 314-278-8835  
E: [andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)  
W: [www.therabody.com](http://www.therabody.com)



---

**From:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Date:** Tuesday, August 30, 2022 at 5:20 PM  
**To:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Subject:** RE: Therabody

Hi Andrew:

These are the prices that would work for us. It would be around 2000-2500 of each. Let me know ASAP as we can move fairly quickly on these.

Mini - \$90

Pime- \$140

Pro - \$275

**Thanks,**

**David Walton**

Mobile: 804-385-2111

---

This message contains confidential information and is intended only for the intended recipients. If you are not an intended recipient you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission. If verification is required please request a hard-copy version.

---

**From:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>

**Sent:** Tuesday, August 30, 2022 3:19 PM

**To:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>

**Subject:** Re: Therabody

Sounds great. Thank you.

Andrew

**Andrew Spellman**

Vice President Corporate Markets | Therabody

C: 314-278-8835

E: [andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)

W: [www.therabody.com](http://www.therabody.com)



---

**From:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>

**Date:** Tuesday, August 30, 2022 at 2:16 PM

**To:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>

**Subject:** Re: Therabody



I'm waiting on my boss with the numbers. Should have them by the morning

Thanks,

David Walton

---

**From:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Sent:** Tuesday, August 30, 2022 3:13:50 PM  
**To:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Subject:** Re: Therabody

Let me know if you would rather discuss over the phone.  
Andrew

**Andrew Spellman**  
Vice President Corporate Markets | Therabody  
C: 314-278-8835  
E: [andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)  
W: [www.therabody.com](http://www.therabody.com)



---

**From:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Date:** Tuesday, August 30, 2022 at 12:36 PM  
**To:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Subject:** Re: Therabody

Andrew,

Thanks for the e-mail and prices. I have reviewed your prices, but I don't think these prices will work for us. To be honest Hyperice came back to us with much more aggressive prices. Without a doubt, Therabody is #1 but for us we want to give away a branded product and get the best price. If you guys have some more room, we could give you some suggested pricing.

If you are ever in the Virginia area please stop in to see me.

Thanks,

David Walton

---

**From:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Sent:** Friday, August 26, 2022 11:44:37 AM

**To:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>

**Subject:** Re: Therabody

Actually same for PRO and mini. 3% more off for Elite and Prime.

**Andrew Spellman**

VP of Corporate Markets | Therabody

P • 314.278.8835

E • [andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)

[www.therabody.com](http://www.therabody.com)

On Aug 26, 2022, at 10:27 AM, David Walton <[DWalton@dominionsource.com](mailto:DWalton@dominionsource.com)> wrote:

Thanks for quick reply. Just so I can go back with other options. What would 5k at each one be?

Thanks,

David Walton

---

**From:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>

**Sent:** Friday, August 26, 2022 10:55:10 AM

**To:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>

**Subject:** Re: Therabody

Andrew,

Please get me the best pricing you can on (2-3K each) of Pro, Elite, Mini, and Prime. I'm also considering Hyperice devices.

Thanks,

David

---

**From:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>

**Sent:** Thursday, August 25, 2022 4:47 PM

**To:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>

**Subject:** Therabody

**Andrew Spellman**

Vice President Corporate Markets | Therabody

C: 314-278-8835

E: [andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)

W: [www.therabody.com](http://www.therabody.com)



---

**From:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>

**Date:** Thursday, August 25, 2022 at 3:25 PM

**To:** Hannah Solton <[hannah.solton@therabodycorp.com](mailto:hannah.solton@therabodycorp.com)>

**Cc:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>

**Subject:** Re:

Greetings and thank you Hannah. Andrew please let me know a good time to speak I'm pretty wide-open

Thanks,

David Walton

---

**From:** Hannah Solton <[hannah.solton@therabodycorp.com](mailto:hannah.solton@therabodycorp.com)>

**Sent:** Thursday, August 25, 2022 4:16:38 PM

**To:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>

**Cc:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>

**Subject:** Re:

Hi David,

Great to meet you! We'd love to speak with you about this further.

Andrew Spellman, our VP of Corporate Markets, can definitely help you out with this. He's copied on this email.

Andrew, David is interested in purchasing 2,000 - 3,000 Theraguns.

I will let you both take it from here.

All the best,

**Hannah Solton**

Executive Project Manager | Therabody

P • 310 801 2087

E • [hannah.solton@therabodycorp.com](mailto:hannah.solton@therabodycorp.com)

[www.Therabody.com](http://www.Therabody.com)



---

**From:** David Walton

**Sent:** Tuesday, August 23, 2022 5:53:57 AM

**To:** [hannah.solton@therabodycorp.com](mailto:hannah.solton@therabodycorp.com) <[hannah.solton@therabodycorp.com](mailto:hannah.solton@therabodycorp.com)>

**Subject:**

Hannah

Was wondering if you could point me in the right direction? We are looking to source a lot of your product for the upcoming fall and winter.

Thanks,

David Walton  
804-385-2111

## Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more [Click Here](#).

## Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more [Click Here](#).

## Alex E. Jones

---

**From:** Jonathan Feldman <[jonathan.feldman@therabodycorp.com](mailto:jonathan.feldman@therabodycorp.com)>  
**Sent:** Thursday, June 22, 2023 1:49 PM  
**To:** Alex E. Jones  
**Subject:** Fwd: FW: Therabody

----- Forwarded message -----

From: **Andrew Spellman** <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
Date: Wed, Jun 21, 2023 at 9:24 AM  
Subject: FW: Therabody  
To: Jonathan Feldman <[jonathan.feldman@therabodycorp.com](mailto:jonathan.feldman@therabodycorp.com)>

“huge company wide campaign”

AS

Andrew Spellman

Vice President Corporate Markets | Therabody

C: 314-278-8835

E: [andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)

W: [www.therabody.com](http://www.therabody.com)



---

**From:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Date:** Wednesday, August 31, 2022 at 6:57 PM  
**To:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Subject:** Re: Therabody

We may go big with this. If you can do those prices we can do a huge company wide campaign

Thanks,

David Walton

---

**From:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Sent:** Wednesday, August 31, 2022 9:24:50 AM  
**To:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Subject:** Re: Therabody

Great. Thank you.

Andrew

Andrew Spellman

Vice President Corporate Markets | Therabody

C: 314-278-8835

E: [andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)

W: [www.therabody.com](http://www.therabody.com)



---

**From:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Date:** Wednesday, August 31, 2022 at 8:22 AM  
**To:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Subject:** Re: Therabody

Awesome news. Thank you. I am out on vacation back until Friday. Will have it to you then

Thanks,

David Walton

---

**From:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Sent:** Wednesday, August 31, 2022 9:18:23 AM  
**To:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Subject:** Re: Therabody

David:

We can get to those prices for you for a large buy of the 2,000 or so units per unit you are requesting. Please complete the attached New Account Form to get things rolling on our end and return to me.

Andrew

Andrew Spellman

Vice President Corporate Markets | Therabody

C: 314-278-8835

E: [andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)

W: [www.therabody.com](http://www.therabody.com)



---

**From:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>

**Date:** Tuesday, August 30, 2022 at 5:20 PM

**To:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>

**Subject:** RE: Therabody

Hi Andrew:

These are the prices that would work for us. It would be around 2000-2500 of each. Let me know ASAP as we can move fairly quickly on these.

Mini - \$90

Pime- \$140

Pro - \$275



Thanks,

David Walton

Mobile: 804-385-2111

---

This message contains confidential information and is intended only for the intended recipients. If you are not an intended recipient you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission. If verification is required please request a hard-copy version.

---

**From:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Sent:** Tuesday, August 30, 2022 3:19 PM  
**To:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Subject:** Re: Therabody

Sounds great. Thank you.

Andrew

Andrew Spellman

Vice President Corporate Markets | Therabody

C: 314-278-8835

E: [andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)

W: [www.therabody.com](http://www.therabody.com)



---

**From:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Date:** Tuesday, August 30, 2022 at 2:16 PM  
**To:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Subject:** Re: Therabody

I'm waiting on my boss with the numbers. Should have them by the morning

Thanks,

David Walton

---

**From:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Sent:** Tuesday, August 30, 2022 3:13:50 PM  
**To:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Subject:** Re: Therabody

Let me know if you would rather discuss over the phone.

Andrew

Andrew Spellman

Vice President Corporate Markets | Therabody

C: 314-278-8835

E: [andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)

W: [www.therabody.com](http://www.therabody.com)



---

**From:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Date:** Tuesday, August 30, 2022 at 12:36 PM  
**To:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Subject:** Re: Therabody

Andrew,

Thanks for the e-mail and prices. I have reviewed your prices, but I don't think these prices will work for us. To be honest Hyperice came back to us with much more aggressive prices. Without a doubt, Therabody is #1 but for us we want to give away a branded product and get the best price. If you guys have some more room, we could give you some suggested pricing.

If you are ever in the Virginia area please stop in to see me.

Thanks,

David Walton

---

**From:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Sent:** Friday, August 26, 2022 11:44:37 AM

**To:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>

**Subject:** Re: Therabody

Actually same for PRO and mini. 3% more off for Elite and Prime.

**Andrew Spellman**

VP of Corporate Markets | Therabody

P • 314.278.8835

E • [andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)

[www.therabody.com](http://www.therabody.com)

On Aug 26, 2022, at 10:27 AM, David Walton <[DWalton@dominionsource.com](mailto:DWalton@dominionsource.com)> wrote:

Thanks for quick reply. Just so I can go back with other options. What would 5k at each one be?

Thanks,

David Walton

---

**From:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>

**Sent:** Friday, August 26, 2022 10:55:10 AM

**To:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>

**Subject:** Re: Therabody

Andrew,

Please get me the best pricing you can on (2-3K each) of Pro, Elite, Mini, and Prime. I'm also considering Hyperice devices.

Thanks,

David

---

**From:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>

**Sent:** Thursday, August 25, 2022 4:47 PM

**To:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>

**Subject:** Therabody

**Andrew Spellman**

Vice President Corporate Markets | Therabody

C: 314-278-8835

E: [andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)

W: [www.therabody.com](http://www.therabody.com)



---

**From:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Date:** Thursday, August 25, 2022 at 3:25 PM  
**To:** Hannah Solton <[hannah.solton@therabodycorp.com](mailto:hannah.solton@therabodycorp.com)>  
**Cc:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Subject:** Re:

Greetings and thank you Hannah. Andrew please let me know a good time to speak I'm pretty wide-open

Thanks,

David Walton

---

**From:** Hannah Solton <[hannah.solton@therabodycorp.com](mailto:hannah.solton@therabodycorp.com)>  
**Sent:** Thursday, August 25, 2022 4:16:38 PM  
**To:** David Walton <[DWalton@DOMINIONSOURCE.COM](mailto:DWalton@DOMINIONSOURCE.COM)>  
**Cc:** Andrew Spellman <[andrew.spellman@therabodycorp.com](mailto:andrew.spellman@therabodycorp.com)>  
**Subject:** Re:

Hi David,

Great to meet you! We'd love to speak with you about this further.

Andrew Spellman, our VP of Corporate Markets, can definitely help you out with this. He's copied on this email.

Andrew, David is interested in purchasing 2,000 - 3,000 Theraguns.

I will let you both take it from here.

All the best,

**Hannah Solton**  
Executive Project Manager | Therabody  
P • 310 801 2087  
E • [hannah.solton@therabodycorp.com](mailto:hannah.solton@therabodycorp.com)  
[www.Therabody.com](http://www.Therabody.com)



---

**From:** David Walton  
**Sent:** Tuesday, August 23, 2022 5:53:57 AM  
**To:** [hannah.solton@therabodycorp.com](mailto:hannah.solton@therabodycorp.com) <[hannah.solton@therabodycorp.com](mailto:hannah.solton@therabodycorp.com)>  
**Subject:**

Hannah

Was wondering if you could point me in the right direction? We are looking to source a lot of your product for the upcoming fall and winter.

Thanks,

David Walton  
804-385-2111

## Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more [Click Here](#).

## Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more [Click Here](#).

**Therabody, Inc.**

6100 Wilshire Blvd.  
Suite 200  
Los Angeles California 90048  
United States

(424) 250-8098

[billing@therabodycorp.com](mailto:billing@therabodycorp.com)



# Therabody

## SALES ORDER

**BILL TO**

Dominion Sourcing, LLC  
13321 W Salisbury road  
Midlothian Virginia 23113  
United States

**SHIP TO**

Dominion Sourcing, LLC  
1601 Jessup Street  
Wilmington DE 19802  
United States

**SALES # SO1162234****DATE** 09/02/2022**PO#** SO1162234

ACTIVITY	QTY	PRICE	AMOUNT
<b>G4-MINI-PKG-US</b> THERAGUN MINI	5,000	90.00	450,000.00
<b>G4-PRIME-PKG-US</b> THERAGUN PRIME	4,000	140.00	560,000.00
<b>G4-PRO-PKG-US</b> Theragun PRO	1,500	275.00	412,500.00
<b>Shipping Service fee</b> FREIGHT TBD	1	0.00	0.00

SUBTOTAL	1,422,500.00
TAX TOTAL (0%)	0.00
SHIPPING COST	0.00
TOTAL	USD 1,422,500.00

**Please Remit Check Payment To:**

PO Box 102569 Pasadena, CA 91189

Bank Name Routing  
JPMorgan Chase 322271627

Account #  
689688494

Name  
Therabody, Inc



SO1162234



**Therabody, Inc.**

6100 Wilshire Blvd.  
Suite 200  
Los Angeles California 90048  
United States

(424) 250-8098

[billing@therabodycorp.com](mailto:billing@therabodycorp.com)



# Therabody

## SALES ORDER

**BILL TO**

Dominion Sourcing, LLC  
13321 W Salisbury road  
Midlothian VA 23113  
United States

**SHIP TO**

Dominion Sourcing, LLC  
1601 Jessup Street  
Wilmington DE 19802  
United States

**SALES # SO1190190****DATE** 10/12/2022**PO#** DOMINION  
SOURCING ORDER  
2

ACTIVITY	QTY	PRICE	AMOUNT
<b>MINI-RETAIL</b> B2B MINI RETAIL demo	1,092	87.00	95,004.00
<b>G4-PRIME-PKG-US</b> THERAGUN PRIME	5,000	140.00	700,000.00
<b>G4-PRO-PKG-US</b> Theragun PRO	3,000	275.00	825,000.00

SUBTOTAL	1,620,004.00
TAX TOTAL (0%)	0.00
SHIPPING COST	8,800.00
TOTAL	USD 1,628,804.00

**Please Remit Check Payment To:**

PO Box 102569 Pasadena, CA 91189

Bank Name Routing  
JPMorgan Chase 322271627

Account #  
689688494

Name  
Therabody, Inc



SO1190190

**Therabody, Inc.**

6100 Wilshire Blvd.  
Suite 200  
Los Angeles California 90048  
United States

(424) 250-8098

[billing@therabodycorp.com](mailto:billing@therabodycorp.com)



# SALES ORDER

**BILL TO**

Dominion Sourcing, LLC  
13321 W Salisbury road  
Midlothian VA 23113  
United States

**SHIP TO**

Dominion Sourcing, LLC  
Dominion Sourcing, LLC  
77 McCullough Dr  
Suite 8  
New Castle DE 19720  
United States

**SALES # SO1309224**

**DATE** 12/14/2022

**PO#** ORDER 3 PRIMES

ACTIVITY	QTY	PRICE	AMOUNT
<b>G4-PRIME-PKG-US</b> THERAGUN PRIME	1,000	125.00	125,000.00

SUBTOTAL	125,000.00
TAX TOTAL (0%)	0.00
SHIPPING COST	1,400.00
TOTAL	USD 126,400.00

**Please Remit Check Payment To:**

PO Box 102569 Pasadena, CA 91189

Bank Name Routing  
JPMorgan Chase 322271627

Account #  
689688494

Name  
Therabody, Inc



SO1309224

EXHIBIT 6

**Therabody, Inc.**

6100 Wilshire Blvd.  
Suite 200  
Los Angeles California 90048  
United States

(424) 250-8098

[billing@therabodycorp.com](mailto:billing@therabodycorp.com)



# Therabody

## SALES ORDER

**BILL TO**

Dominion Sourcing, LLC  
13321 W Salisbury road  
Midlothian VA 23113  
United States

**SHIP TO**

Dominion Sourcing, LLC  
Dominion Sourcing, LLC  
77 McCullough Dr  
Suite 8  
New Castle DE 19720  
United States

**SALES # SO1354224****DATE** 1/10/2023**PO#** SO1354224

ACTIVITY	QTY	PRICE	AMOUNT
<b>G4-ELITE-BLK-PKG-US</b> Theragun Elite	4,000	167.50	670,000.00
SUBTOTAL			670,000.00
TAX TOTAL (0%)			0.00
SHIPPING COST			3,700.00
TOTAL			USD 673,700.00

**Please Remit Check Payment To:**

PO Box 102569 Pasadena, CA 91189

**Bank Name****Routing****Account #****Name**

JPMorgan Chase 322271627

689688494

Therabody, Inc



SO1354224

Sales Order #	Product	Quantity	Price Paid	Total Paid	MSRP	Total MSRP
SO1162234	G4-Mini	5000	\$ 90.00	\$ 450,000.00	\$ 199.00	\$ 995,000.00
SO1162234	G4-Prime	4000	\$ 140.00	\$ 560,000.00	\$ 299.00	\$ 1,196,000.00
SO1162234	G4-Pro	1500	\$ 275.00	\$ 412,500.00	\$ 599.00	\$ 898,500.00
SO1190190	B2B Mini Retail Demo	1092	\$ 87.00	\$ 95,004.00	\$ 199.00	\$ 217,308.00
SO1190190	G4-Prime	5000	\$ 140.00	\$ 700,000.00	\$ 299.00	\$ 1,495,000.00
SO1190190	G4-Pro	3000	\$ 275.00	\$ 825,000.00	\$ 599.00	\$ 1,797,000.00
SO1309224	G4-Prime	1000	\$ 125.00	\$ 125,000.00	\$ 299.00	\$ 299,000.00
SO1354224	G4-Elite	4000	\$ 167.50	\$ 670,000.00	\$ 399.00	\$ 1,596,000.00
				<u>\$ 3,837,504.00</u>		<u>\$ 8,493,808.00</u>

**Difference between price paid and MSRP: \$4,656,304.00**



ALEX E. JONES | Partner

Direct: 216.736.7241 | Mobile: 440.832.0599 | AEJ@kjk.com

VIA CERTIFIED MAIL AND EMAIL (DWalton@dominionsource.com)

February 7, 2023

David C. Walton  
IT Director  
Dominion Sourcing LLC  
13321 W. Salisbury Rd.  
Midlothian, Virginia 23113

and

14321 Winter Breeze Dr.  
Suite 46  
Midlothian, Virginia 23113

**Re: Demand for Payment and Immediate Cease and Desist of Sale or  
Transfer of Therabody Products**

**Dear David:**

Please be advised that Therabody, Inc. ("**Therabody**") has retained our firm in connection with Dominion Sourcing, LLC's ("**Dominion**") material breach of the September 12, 2022 Therabody Terms & Conditions of Sale (Corporate Markets) agreement (the "**Agreement**"). Please remit payment to Therabody in the amount of four million, three-hundred ninety-seven thousand, one hundred and four dollars (\$4,397,104) immediately pursuant to Section 3 of the Agreement. Please have your legal counsel contact me at its earliest convenience to discuss.

Under the Agreement, Dominion purchased 23,792 products (the "**Products**") from Therabody from September 2022 to January 2023 as set forth below.

Sales Order Number	Product	Product Price Paid	Quantity	Total Price Paid
SO1162234	G4-Mini	\$90.00	5000	\$450,000
SO1162234	G4-Prime	\$140.00	4000	\$560,000
SO1162234	G4-Pro	\$275.00	1500	\$412,500

**CLEVELAND OFFICE**

1375 East Ninth Street  
One Cleveland Center + 29th Floor  
Cleveland OH 44114

**COLUMBUS OFFICE**

10 West Broad Street  
One Columbus Center + Suite 1900  
Columbus OH 43215

KJK.com



A LAW FIRM **BUILT FOR BUSINESS.**

**EXHIBIT 9**

Sales Order Number	Product	Product Price Paid	Quantity	Total Price Paid
SO1190190	B2B Mini Retail Demo	\$87.00	1092	\$95,004
SO1190190	G4-Prime	\$140.00	5000	\$700,000
SO1190190	G4-Pro	\$275.00	2200	\$605,000
SO1309224	G4-Prime	\$125.00	1000	\$125,000
SO1354224	G4-Elite	\$167.50	4000	\$670,000

In total, Therabody sold the Products at a steep discount to Dominion for \$3,617,504. The MSRP of the Products totals \$8,014,608.

Dominion purchased the Products under the guise that it would be giving the Products to its employees as gifts. However, Therabody has recently discovered that certain of the Products that it sold to Dominion have made their way into ecommerce channels in violation of Section 3 of the Agreement. In particular, Therabody tracked the Products to multiple sellers on the Amazon Marketplace who are not authorized resellers of Therabody's products or otherwise permitted to sell, advertise, or represent an affiliation with Therabody and its products.

Without question, Section 3 of the Agreement prohibits Dominion from selling or otherwise transferring the Products to anyone via ecommerce channels, including without limitation, the Amazon Marketplace. Under Section 3, Dominion is also prohibited from selling or otherwise transferring the Products to any person or operators engaged in ecommerce. For violating Section 3, Dominion has agreed that it would pay "the difference of the purchase price paid by [Dominion] for the Products and the MSRP for such Products" to Therabody.

Accordingly, on or before **February 24, 2023**, please remit payment to Therabody in the amount of \$4,397,104, which represents the difference between the MSRP of the Products and the discounted price paid by Dominion, as Dominion agreed. If payment is not received by that date, Therabody reserves the right to charge the full amount of damages to the Dominion credit card that Therabody has on file. In addition, and in accordance with Section 3, Therabody demands that Dominion immediately cease and desist from: (i) selling any of the Products on any ecommerce platform; and (ii) selling or transferring any of the Products to any third party who intends to sell the Products through any ecommerce channel.

**CLEVELAND OFFICE**

 1375 East Ninth Street  
 One Cleveland Center + 29th Floor  
 Cleveland OH 44114

**COLUMBUS OFFICE**

 10 West Broad Street  
 One Columbus Center + Suite 1900  
 Columbus OH 43215

KJK.com



A LAW FIRM BUILT FOR BUSINESS.

**THIS LETTER DOES NOT PURPORT TO BE A COMPLETE STATEMENT OF THE LAW, THE FACTS, OUR CLIENT'S RIGHTS OR POTENTIAL CLAIMS, AND THIS LETTER IS WITHOUT PREJUDICE TO OUR CLIENT'S LEGAL AND EQUITABLE RIGHTS, ALL OF WHICH ARE EXPRESSLY RESERVED.**

Sincerely,



**ALEX E. JONES**  
Partner | KJK

cc: Kyle D. Stroup, Esq.

**CLEVELAND OFFICE**

1375 East Ninth Street  
One Cleveland Center + 29th Floor  
Cleveland OH 44114

**COLUMBUS OFFICE**

10 West Broad Street  
One Columbus Center + Suite 1900  
Columbus OH 43215

[KJK.com](http://KJK.com)



A LAW FIRM **BUILT FOR BUSINESS.**